

### Remarks

It is again requested that the restriction requirement be reconsidered and be withdrawn. A petition to have the restriction requirement withdrawn is being submitted at the same time as this amendment. It is noted that the Examiner has acted on new claims 19 through 22 even though they are claims within the non-elected group.

In accordance with the above amendments the applicant has made the amendments suggested in paragraph 3 of the final rejection.

The rejection of claims 1-10 and 19-22 under 35 U.S.C. 103 over Brant and Luciani is again respectfully traversed.

The Examiner apparently recognizes that the present claims require the employment of a metallocene that has a monoorganoamide ligand and that the cited references do not disclose such a metallocene but rather metallocenes having dialkylamido groups.

Issue is taken with the Examiner's assertion that there is case law which compels the conclusion that the substitution of a hydrogen for a methyl group is always obvious. The two cases cited by the Examiner has been reviewed and both those cases were, first of all, directed to claims to specific compounds. That is not the case in this application. In this application the claims are directed to the combination of a metallocene and an alkylaluminum compound which is suitable for use as a catalyst in the polymerization of olefins. The applicant here is not attempting to claim merely a metallocene having a monoorganoamide ligand. Accordingly, it is submitted that those cases have no application to the present situation. The issue presented by the present

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claims is, instead, whether the prior art makes it obvious that one could obtain a useful catalyst system by combining a metallocene having a monoorganoamide ligand with an alkylaluminum compound.

The Examiner says that there were six other cases that he viewed as supporting the position that the substitution of a hydrogen for a methyl would be *prima facie* obvious. The Examiner, however, did not recite what those cases were. The undersigned attorney is not aware of any such cases.

It is submitted that it can be very easily shown that there are many cases in which the substitution of a hydrogen for a methyl or vice versa could not produce equivalent results. One example for the Examiner to consider would be whether he would consider it to be the same if he drank diethyl ether or an ethanol-containing beverage such as beer or wine. It is submitted that it is well known that if one sits and sniffs diethyl ether the effect on humans is quite different than one merely sniffing ethyl alcohol. There is nothing in the cited references which provides any motivation whatsoever for replacing one of the alkyl groups of the dialkylamido with a hydrogen. The mere fact that they made no such suggestion would have caused those skilled in the art to assume that such would not have been a desirable thing to do.

The Examiner is again requested to consider the case of *In re Biak*, 226 USPQ 870, 872 (CAFC 1985). That case points out that the Court of Appeals of the Federal Circuit has taken the position that generalization should be avoided insofar as whether one specific chemical structure can be viewed as *prima facie* obvious from

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another. That case alone should be enough to demonstrate that the cases cited by the Examiner would not be followed by the CAFC in the present case.

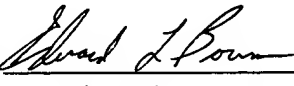
The Examiner is also invited to review the cases of *In re Ochia*, 37 USPQ 2d 1127 (CAFC 1995) and *In re Brouwer*, 37 USPQ 2d 1663 (CAFC 1995). In the case of *Brouwer*, the court indicates that the test of obviousness is a statutory test which requires that one compare the claims "subject matter as a whole" with the prior art "to which said subject matter pertains". The court goes on to say that the inquiry is highly fact specific and that that is so whether the invention is a process for making, a process of using, or some other process. In the case of *In re Ochia* at page 1131 the court notes that the mere chemical possibility that a prior art compound could be modified does not make the invention obvious unless the prior art suggested the desirability of such a modification.

It is submitted that in the present case no art has been cited which provides any basis whatsoever for assuming that one could obtain a catalyst system suitable for the polymerization of olefins by combining an alkylaluminum compound with a metallocene of the type required by the present claims. While it is true that in some cases, closely related homologs do have similar properties. The fact is that they often also have properties that are very different. The above example comparing ethanol and diethyl ether is simply one such case.

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In view of the foregoing amendments and remarks, it is respectfully requested that the rejections be reconsidered and withdrawn and that all the pending claims be allowed.

Respectfully submitted,

By   
Edward L. Bowman  
Registration No. 27,116

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Attachment

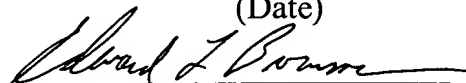
Chevron Phillips Chemical Company LP  
Suite 3447  
1301 McKinney  
Houston, TX 77010  
1-918-661-0526

C E R T I F I C A T E   O F   M A I L I N G

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Edward L. Bowman

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**Marked-Up Version Showing Changes Made**

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1. (Twice amended) A catalyst system comprising the product resulting from the combination of a metallocene of a group [IVB, VB, and VIB] 4, 5, or 6 metal having a monoorganoamide bonded to the metal of the metallocene and a cocatalyst having <sup>an</sup> alkylaluminum <sup>group</sup> functional~~ity~~.

19. (Amended) A catalyst system according to claim 1 wherein the metal of the metallocene is [selected from] titanium, zirconium, [and] or hafnium.

21. (Amended) A catalyst system according to claim [19] 20 wherein the [metallocene has] two cyclic dienyl groups [pi-bonded to the metal] of the metallocene are not bonded to each other.